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LEGAL SETTINGS FOR USE OF THE RIGHT TO SELECT AS HUMAN RIGHTS IN INDONESIA

Harisman

Law Faculty

Universitas Muhammadiyah Sumatera Utara

E-mail: harisman@umsu.ac.id

Abstract

Voting rights are not infrequently a hot conversation in elections, presidential elections, and regional head elections. Many people question the existence of the right of suffrage held by citizens. Because the implementation of suffrage is closely related to political issues that aim to gain power. Political reasons are sometimes used as justification for curbing citizens' voting rights which are considered normal and reasonable. In terms of legislation provides guarantees for citizens in fulfilling their voting rights as human rights. To see how the legal arrangements for suffrage in the human rights perspective, using the method used can be in the form of normative research using secondary data obtained from the literature and analyzed qualitatively and the results described. Based on the analysis it appears that although the right to vote is guaranteed in legislation, but in its implementation it has two meanings, namely: on the one hand it can be used freely without the interference of any party related to the determination of the right to vote, and on the other hand it can be restricted in connection with the use of suffrage relating to procedural issues.

Keywords: *Regulation of Law, Use of Voting Rights, Human Rights*



A. Introduction

The Indonesian state is expressly stated in the constitution as a state of law (*rechtstaat*) and not a state of power (*maachtstaat*). This means that all governance and community life should be carried out based on law and not based on mere power. Moreover, one element of the state law requires respect for human rights that are guaranteed by the 1945 Constitution (Amendment) as a basic law in the state for the government, society, and individuals as citizens.

Likewise the implementation of General Elections (hereinafter referred to as Elections) consisting of: Legislative General Elections (hereinafter abbreviated as "Pileg"), Election of the President and Vice President (hereinafter abbreviated as "Presidential Election") and or Election of Regional Heads (hereinafter referred to as "Pilkada") a reflection of the recognition and respect for human rights to participate in determining the administration of government through a democratic system. The failure of the democratic system can hamper the growth and development of the promotion and protection of human rights.

Constitutionally the use of suffrage is a human right that is owned by every human - individual - has been declared and made as constitutional rights and obligations for every citizen. This means that every citizen has the right and obligation to exercise his right to vote freely without the influence and pressure of any party according to his conscience.

The use of voting rights in the General Election is not rarely questioned and questioned and even contested. This is influenced by the existence of a fairly strong political element due to the presence of various interests related to supportive issues in order to obtain certain powers. It is not uncommon to cause horizontal conflicts (conflict) in the midst of society in the use of voting rights between individuals with individuals, individuals and groups, and one group with another group. Even the commotion / conflict can continue even though the General Election has ended. If this continues, it is feared that it could threaten the role of the community to exercise their right to vote in the General Election as a reflection of human rights. Likewise, disrupting the growth and



development of efforts to promote, respect and protect human rights will decline. In the case that since the reformation period began in 1998, the freedom to exercise suffrage and even express opinions and voices began to get its place in the midst of the community in the life of the community, nation and state so that it was not harmed.

Based on the description above, the problem examined in this study is how the legal regulation of suffrage as a human right in Indonesia.

B. Research Methods

This research is a type of normative research with a normative juridical approach with studies that refer to the applicable laws and regulations and other legal materials. The data sources used in this study used secondary data obtained from the literature. Various secondary data collected was analyzed to get answers to the legal arrangements for suffrage as human rights in Indonesia, which were the main topics of discussion in this study.

The analytical method used is qualitative to see the extent to which suffrage is regulated in laws and regulations or legal regulations. Analysis results are described descriptively.

C. Legal Settings On The Right To Select As Human Rights In Indonesia

The term "suffrage" which is also often referred to as "voting rights" or "right to vote" is a constitutional right of citizens (the citizens constitutional rights or the citizens rights)) which is recognized as part of the right to an equal position in law and government as guaranteed by the 1945 Constitution (Amendment). (KhairulFahmi: 2017: 1). Even this suffrage was included as part of human rights in the 1945 Constitution to participate in the government. Because the 1945 Constitution even though implicitly includes suffrage in the chapter on human rights as stipulated in Article 28 D Paragraph (3) as follows: "Every citizen has the right to obtain equal opportunities in government". This means that suffrage is a form of the rights possessed by every human / individual.



In the juridical conception of human rights can be divided into 2 (two) categories, namely (Johan Yasin: 2009: 6):

- 1) Basic rights that only citizens have.
- 2) Basic rights which are basically owned by all people who reside in a country regardless of their nationality.

Based on the description above, suffrage can be seen from 2 (two) perspectives, namely: first: as citizen's rights or citizens' constitutional rights, and second: as human rights. Jimly Assiddiqie stated that "the constitutional rights of citizens only apply to people who are citizens, while foreigners are not guaranteed (2014: 353). Whereas human rights apply to all residents - both citizens and foreigners - who live within the territory of the country.

The division of rights above is not a distinction that is important enough to be disputed. It's just to see in terms of how the suffrage is given and used. Because rights that are categorized as citizens' rights are actually inseparable from human rights. In other words speaking of citizens 'rights means talking about human rights, conversely speaking, human rights are also related to citizens' rights. This means fulfilling the rights of citizens as an effort to respect and protect human rights.

Citizen rights are an authority that is owned by citizens to do something according to legislation that arises or comes from the state. (Johan Yasin: 7-8) The birth of citizens' rights as a result of the relationship between the state and the individual or someone marked by the giving of citizenship. Moreover, citizenship is recognized as a right for every human being as stated in Article 15 paragraph (1) of the Universal Declaration of Human Rights in 1948 as follows: "Every person has the right to citizenship". With citizenship, mutual rights and obligations arise between countries and individuals as citizens. The state is given the obligation to guarantee and protect citizens' rights. On the contrary citizens have an obligation to obey and obey orders from the state in accordance with the constitution.

The categorization of voting rights is not only a citizen right, but also acknowledged as human rights can be found in various human rights



instruments. Article 21 Universal Declaration of Human Rights 1948 determines the following:

- (1) Everyone has the right to participate in the government of his own country, both directly and with the intermediaries of his freely chosen representatives.
- (2) Every person has the right to equal opportunity to be appointed in the position of government of his country.
- (3) The willingness of the people must be the basis of government authority; this will must be stated in periodic elections which are honest and which are carried out according to the general and equal suffrage, as well as by secret voting or in other ways that also guarantee freedom to cast votes. "

Similarly, it is further regulated in Article 25 letter b of the International Covenant on Civil and Political Right 1966 as follows:

"Every citizen must have the same rights and opportunities without any distinction as stated in article 2 and without unnatural restrictions:

- (b) Choose and be elected in free periodic elections and with equal and universal suffrage and are held through the issuance of written and confidential votes that guarantee voters to express their will freely. "

It is no different with Indonesia which sees suffrage as well as human rights as regulated in Article 28 D paragraph (3) of the 1945 Constitution (Amandement) and can also be found in Article 23 paragraph (1) of Law Number 39 of 1999 concerning Rights Human Rights as follows: "everyone is free to choose and have political beliefs". Similarly, Article 43 paragraph (1) of this Law determines: "Every citizen has the right to be elected and elected in general elections based on equality of rights through direct, public, free, confidential, honest and fair voting in accordance with the provisions of the regulations. legislation".

Based on various legal provisions above, showing suffrage as a human right is a basic right of human beings that must be respected and protected by the state, government, society, and everyone without exception. Voting rights as human rights are categorized as political rights which provide freedom for individuals and / or citizens who fulfill them without interference or intervention from other parties (both the state and



other social forces). (Rhona K. M. Smith et al: 2010: 15). This means that each individual or every citizen is given a space of freedom in which an individual or citizen has the right to determine himself (self determination) as a right to personal freedom.

Although the right to vote has been clearly regulated in a juridical manner, it still raises a variety of problems that give rise to debates about the existence of the right to vote held by each individual or citizen. Many parties questioned how the existence of freedom of suffrage as a political right. Moreover, this voting rights are often associated with the implementation of legislative elections, the election of president and vice president, and elections to the regions. Not infrequently found the right to vote cannot be used freely by every individual or citizen.

Voting rights as a right to personal freedom can be interpreted in 2 (two) meanings, namely: first, "suffrage in the sense to make choices", and second, "suffrage in the sense of using choices". Voting rights are seen as a choice which means that each individual or citizen is freely based on the consideration of his beliefs and conscience to make his choice without any restrictions or pressure from other parties. This is related to determining the attitude of actions and or actions of each individual or citizen in making a decision on what he chooses. In making choices, every citizen is bound to what is stipulated through legislation with the intention of guaranteeing human rights and the freedoms of others. .

While suffrage is interpreted as using choices related to procedural problems how each individual or citizen can exercise his rights. The stipulation of procedural requirements in using voting rights is intended as follows: (Sarbaini: 2015: 110)

- a. ensure that all citizens who have the right can use it,
- b. Avoid fraud;
- c. as a unit of planning for holding elections

Sometimes the procedural reasons can hinder the substance, namely fulfilling the right of voters to vote. To ensure the fulfillment of the right to freedom in setting and or using choices for every citizen, it should be based on the direct, general, free and confidential principle. The overflow principle is related to the way the voters submit their votes,



which must be directly without being represented generally applicable to all citizens, carried out freely without coercion, and in secret. (Sarbaini: 2015: 110) According to Jimly Asshiddiqie, "overflowing principles involve objective which must be in the process of implementing or the election mechanism, especially when someone exercises his right to vote ". (2002) With this overflowing principle, it can prevent attempts to limit and reduce voting rights in terms of making choices, and using suffrage with procedural reasons.

In juridical suffrage as a human right in its implementation can only be limited through legislation based on reasons solely to ensure the recognition and respect that is appropriate for the rights and freedoms of others in accordance with moral considerations, values religion, security, public order and national interests. This can be seen from several legal provisions as follows: Article 29 paragraph (2) Universal Declaration of Human Rights 1948, Article 28 J paragraph (2) of the 1945 Constitution (Amendment), and Article 73 of Law Number 39 of 1999 About Human Rights. In addition, restrictions through laws must be based on reasons that are strong, reasonable and proportionate and not excessive. (KhairulFahmi: 2017: 768)

According to LaicaMarzuki, restrictions can only be made if it is proportional to the threats faced and not discriminatory, namely for: (i) maintaining national security or public order or health or general morality; (ii) respecting the rights or freedoms of others. In addition rights must not be limited to more than those stipulated by the convention, and must also convey the reasons why the restriction is carried out. (Miftahul Huda: 2010: 22-30) In general the limitation of the right to vote in the law can be in the form of requirements administrative and there are also substantive.

John Rawls, as quoted by Andre Ata Ujan, stresses that restrictions can indeed lead to inequality in political freedom, but this inequality is permissible if it is important to ensure freedom from disadvantaged groups. (2001: 105) In that context, certain restrictions introduced into the law can be justified as long as it is intended to guarantee the right to equal



political participation for all citizens with different backgrounds and resources. (KhairulFahmi: 2017: 768)

D. Closing

Voting rights are human rights that are only granted to citizens whose existence is guaranteed by the laws and regulations. Every citizen is given freedom without interference from other parties in the fulfillment of the right to vote in connection with the implementation of legislative elections, presidential elections and regional elections in accordance with the principle of general, public, free and confidential. Fulfillment of suffrage for citizens in its application can be seen from 2 (two) sides, namely: on the one hand it can be limited in terms of its use, and the other side is free in connection with determining choice.

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